

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

R. CATHY REARDON, on behalf of herself	)	
and all similarly situated individuals,	)	
	)	Civil Action No. 2:08-cv-1730
Plaintiffs,	)	
	)	Hon. Mark R. Hornak
vs.	)	United States District Judge
	)	
CLOSETMAID CORPORATION,	)	<i>Filed Electronically</i>
	)	
Defendant.	)	

**SECOND SUPPLEMENTAL APPENDIX OF RECORD MATERIALS IN SUPPORT OF  
CLOSETMAID'S MOTION TO DECERTIFY THE PRE ADVERSE ACTION SUB-CLASS**

Dated: July 8, 2013

Respectfully submitted,

**OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.**

/s/ W. Scott Hardy

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**Tab 4 - Excerpts of Jennifer Boring April 2, 2013 Deposition Transcript.**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA  
PITTSBURGH DIVISION

R. CATHY REARDON	)	
On behalf of herself and	)	
all similarly situated	)	
individuals,	)	
	)	
Plaintiffs,	)	NO. 2:08cv1730GLL
	)	
vs.	)	Hon. Chief Judge
	)	Gary Lancaster
CLOSETMAID CORPORATION,	)	
	)	Class Action
Defendant.	)	
	)	

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DEPOSITION OF: JENNIFER BORING

DATE TAKEN: Tuesday, April 2, 2013

TIME: 12:50 p.m. - 3:28 p.m.

PLACE: 7 E. Silver Springs Boulevard  
Suite 501  
Ocala, FL 34470

TAKEN BY: Plaintiffs

REPORTED BY: Sandra K. Glick, RPR, RMR,  
CSR(IA,IL), FPR and Notary Public

1 phone, and then if we're able we try to coordinate an  
2 on-site interview so we can meet them face-to-face.

3 Q. Okay. And then "Offer Process." Is that  
4 then what occurs if the person makes it through the  
5 process and there's a decision to offer him a position?  
6 Is that what that is?

7 A. All the processes have been completed, yes.

8 Q. Okay.

9 MR. PIETZ: This will be whatever the next  
10 exhibit will be.

11 THE REPORTER: 10.

12 MR. PIETZ: 10?

13 THE REPORTER: Yes.

14 (Boring Exhibit 10 was marked for  
15 identification.)

16 MR. PIETZ: I have a copy somewhere for you,  
17 Phil.

18 MR. KONTUL: Okay.

19 MR. PIETZ: I think you know what it is.

20 Q. Okay. I'm showing you what has been marked  
21 as your Deposition Exhibit 10. Can you tell me what  
22 this is?

23 A. This was the declaration that I signed.

24 Q. And why did you create this declaration?

25 MR. KONTUL: Objection.

1 MR. PIETZ: And your objection is?

2 MR. KONTUL: To the extent it reveals  
3 attorney-client communications or confidences, do  
4 not disclose those.

5 Q. Well, let me take it a different way. I  
6 don't want to know what you talked with your counsel  
7 about. I just -- I want to know what exactly -- let me  
8 strike that.

9 What's the -- what are you trying to  
10 demonstrate by reason of this declaration?

11 MR. KONTUL: Objection.

12 MR. PIETZ: And what's that?

13 MR. KONTUL: Again, to the extent it reveals  
14 attorney-client or privileged communications they  
15 shouldn't be discussed. Other than that, you can  
16 answer.

17 MR. PIETZ: All right.

18 A. It was to identify these particular  
19 candidates and the reason that they were not hired.

20 Q. Did you write this declaration?

21 MR. KONTUL: Again, to the extent that it  
22 calls for revealing any attorney-client privileged  
23 communications you should not answer. Otherwise  
24 you can answer the question.

25 A. I'm not an attorney; so no.

1 Q. You didn't write it?

2 A. This is my -- I didn't physically type it,  
3 but I reviewed it and signed it.

4 Q. Okay. Let's just talk about the process you  
5 went through to, I guess, arrive at this Exhibit A.  
6 Can you tell me, who are these people that are listed,  
7 the names? How did you identify these certain people?

8 MR. KONTUL: Again, to the extent that it  
9 requires you to reveal attorney-client confidences  
10 you shouldn't reveal them. Other than that, you  
11 can answer.

12 A. It was my understanding that there were  
13 individuals that were identified that there was a  
14 question as to why they were not hired.

15 Q. Are these people who would be in the  
16 so-called subclass in this litigation called preadverse  
17 action persons? Are you aware of that?

18 MR. KONTUL: Again, objection as to  
19 attorney-client communications. Otherwise you can  
20 answer.

21 What I'm saying is, to the extent you're  
22 aware of it other than through attorney-client  
23 communication.

24 A. I believe so.

25 Q. Okay.

1           A.    There was some individuals -- there were some  
2 people identified and there was a question as to why  
3 they were not hired.

4           Q.    Okay.  What I'm trying to understand, did you  
5 create Exhibit A?

6                   MR. KONTUL:  Same objection.  You can answer.

7           A.    Not this piece of paper, but this list came  
8 from me.

9           Q.    This list came from you?

10          A.    Yes.

11          Q.    And how did you, you know, determine these  
12 particular individuals to include on this exhibit?  
13 What did you do?

14          A.    Where I came up with the names?

15          Q.    Yes.

16          A.    I was provided a list.

17          Q.    By your attorney?

18          A.    By legal counsel, correct.

19          Q.    All right.  Is it your understanding that  
20 these are people who fit within that definition of the  
21 subclass?

22          A.    I'm not familiar with the definition of the  
23 subclass.

24          Q.    All right.  So your attorney gave you this  
25 list, and then what did you do with the list?

1           A.    I physically went and pulled the documents  
2   for these individuals and reviewed their applications.

3           Q.    And when did you do this?

4           A.    Several weeks ago.

5           Q.    And how did you make the determination as to  
6   the reason they weren't hired?

7           A.    I reviewed the documents.

8           Q.    Is there somewhere in the document that gives  
9   a final -- makes a final determination?

10          A.    Not necessarily.

11          Q.    No? So how were you able to make that  
12   determination in retrospect?

13          A.    Reviewing the documents.

14          Q.    Okay. But this is -- were you the one in  
15   particular who was responsible for making this  
16   determination back when it occurred?

17          A.    Not in every case, no.

18          Q.    Which one of these did you make?

19          A.    I do not know.

20          Q.    Okay. So as I understand it then, you just  
21   reviewed the file and you made a call as to why they  
22   weren't hired a few weeks ago?

23               MR. KONTUL: Objection.

24          Q.    Is that basically what happened?

25          A.    I made an educated, based on my experience



1 and knowledge of ClosetMaid, review of the documents.

2 Q. I see. So this is your opinion?

3 MR. KONTUL: Objection.

4 A. No, sir.

5 Q. Well, I don't understand. You weren't the  
6 one -- you just told me that this is based upon your  
7 educated guess as to what happened when the  
8 determination was made.

9 MR. KONTUL: Objection. She didn't say that.

10 A. I don't believe -- I didn't say "guess."

11 Q. Okay. Let me understand. You reviewed their  
12 files a few weeks ago; is that right?

13 A. That is correct.

14 Q. And in looking at that file, you were able to  
15 make a determination as to why they're not hired; is  
16 that right?

17 A. I was.

18 Q. Based on what?

19 A. The documents in the file.

20 Q. Is there a particular area of the file where  
21 it gives the file final determination?

22 A. There's a code.

23 Q. There's a code. And that -- you looked at  
24 the code?

25 A. Not initially.

1           Q.    I don't understand.  Not initially, what's  
2   that mean?

3           A.    I would look through the file.  I would  
4   indicate reason for no hire.  The code itself is very  
5   broad.

6           Q.    Okay.  And what are the codes?  How many  
7   codes are there?

8           A.    I don't know them all.

9           Q.    How many are there, do you know?

10          A.    I don't.

11          Q.    Is there a document that sets forth the  
12   codes?

13          A.    There is.

14          Q.    And what's that document called?

15          A.    I don't know the name of it.

16          Q.    And where in the file is the code put?

17          A.    Normally on the front page.

18          Q.    Okay.  Now, in looking at Exhibit A, these  
19   are all persons from Ocala or CMNA; is that right?

20          A.    That's correct.

21          Q.    And meaning this is where they applied to  
22   that geographic location?

23          A.    Correct.

24          Q.    Okay.  And do you know why this is just  
25   Ocala, Florida, on this particular exhibit?

1           A.    It was my area of responsibility.

2           Q.    I see.  Okay.  And why is there not a column  
3 here that lists the results of the background check/  
4 consumer report?

5           A.    I don't know.

6           Q.    Is it your testimony you didn't create this  
7 exhibit?

8           A.    I created this information.

9           Q.    I understand.  But who created the columns?

10          A.    I did.

11          Q.    So why didn't you create a column that listed  
12 the results of the background check?

13          A.    It wasn't relevant.

14          Q.    And based on whose determination?

15          A.    Based on the documents in the file.

16          Q.    I see.  In each one of these cases that  
17 you've listed here, was a consumer report/background  
18 check pulled?

19          A.    I believe so.

20          Q.    And was it looked at by a human resource  
21 representative?

22          A.    I can't speak to that.

23          Q.    But when you were going through this  
24 retrospective process, was it in the file?  Was the  
25 consumer report/background check in the file?

1 A. I believe so.

2 Q. Did you look at it?

3 A. I don't think so.

4 Q. Okay. So the reason for "no hire" column,  
5 that's the final determination that was made; is that  
6 right?

7 MR. KONTUL: Objection.

8 MR. PIETZ: What's your objection?

9 MR. KONTUL: I don't know what that means.

10 Q. Do you understand what I mean?

11 A. No.

12 Q. This is the final reason that is given for  
13 the no hire; right?

14 MR. KONTUL: Same objection.

15 A. By whom?

16 Q. This is the -- by whoever put the code in  
17 there.

18 A. The code is very broad.

19 Q. But this is the ultimate determination as to  
20 why they were not hired; right?

21 A. This is my information based on the document  
22 review.

23 Q. Right. And this is the result of the process  
24 that we were just talking about; right? This is the  
25 process where you get employment information, where you

1 verify references, where you pull a background report.  
2 This is the final result of that process; correct?

3 A. Yes.

4 Q. Okay. Now --

5 MR. PIETZ: I guess I need to get this  
6 copied. Let's see here, maybe I had -- I guess I  
7 don't. I need to get this copied.

8 THE REPORTER: Okay.

9 MR. CARIUS: This may be a good time to move  
10 my car break period.

11 MR. PIETZ: Okay.

12 (A recess was taken.)

13 MR. PIETZ: Mark that as the next exhibit,  
14 whatever that is.

15 THE REPORTER: This will be 11.

16 (Boring Exhibit 11 was marked for  
17 identification.)

18 Q. Okay. Showing you what's been marked as  
19 Deposition Exhibit 11. Can you identify that document?

20 A. It states that it's the response to requests  
21 for production.

22 Q. And you signed a verification in connection  
23 with these?

24 A. I did.

25 Q. And that's your signature on the last page,

1 that verification?

2 A. Yes, that's my signature.

3 Q. Okay. And this document includes -- I  
4 believe it includes your declaration that we were just  
5 talking about.

6 A. Yes.

7 Q. And it includes some other declarations;  
8 isn't that right?

9 A. That is correct.

10 Q. And let's look at those. The first  
11 declaration is Document 5093 at the end there. Do you  
12 see that?

13 A. Yes.

14 Q. That's a declaration of Merlyn  
15 Hernandez-Opio. And who is that, do you know?

16 A. Merlyn is a human resources representative at  
17 ClosetMaid.

18 Q. And what location?

19 A. Ocala.

20 Q. She's in Ocala, okay. And were you at all  
21 involved in her declaration?

22 A. I'm not sure I understand the question.

23 Q. Were you involved at all in any facet of  
24 creating or preparing this declaration and the  
25 information that's attached as Exhibit A?

1           A.    I'm responsible for the information on  
2   Exhibit A.

3           Q.    In what sense?

4           A.    During the process of reviewing the documents  
5   I created it for all locations.

6           Q.    Okay. You put -- did you create Exhibit A on  
7   her declaration?

8           A.    I did.

9           Q.    And you filled in the information?

10          A.    I did.

11          Q.    And you examined the files?

12          A.    I did.

13          Q.    And then why did she sign off on the  
14   declaration?

15          A.    Merlyn would have been the first line  
16   recruiter for these positions.

17          Q.    Was she the human resource representative  
18   that was involved in making the determinations in each  
19   one of these files?

20          A.    I believe so.

21          Q.    And you went through the same process that  
22   you described earlier for your declaration?

23          A.    Yes.

24          Q.    And again how was it that you selected these  
25   individuals to be on Exhibit A?

1           A.    I reviewed each of the documents.

2           Q.    I understand that, but where did you get --  
3   how did you select the files that were on here?

4           A.    They were part of the list of the individuals  
5   that were in question.

6           Q.    All right. So you received a list of persons  
7   in question; is that right?

8           A.    Yes.

9           Q.    And then you went and pulled the files for  
10   each one of those persons?

11          A.    I did.

12          Q.    And not only for your declaration but for her  
13   declaration; is that right?

14          A.    That's correct.

15          Q.    Okay. Now, there are some other declarations  
16   here as well; isn't that right?

17          A.    Yes.

18          Q.    There's a declaration of Patricia Dameron?

19          A.    Yes.

20          Q.    At 5096. And who is she?

21          A.    Pat was the previous director of human  
22   resources for ClosetMaid.

23          Q.    And why was she selected to create a  
24   declaration?

25          A.    She was identified because she was part of



1 the management responsibility for these locations.

2 Q. And looking on Exhibit A, that's Grantsville,  
3 Fife, and CMNA?

4 A. Grantsville and Fife are accurate. CMNA  
5 doesn't seem accurate.

6 Q. Okay. And again with respect to her  
7 declaration, you created Exhibit A; isn't that right?

8 A. I did.

9 Q. And you made these determinations that you  
10 filled in; is that right?

11 A. I reviewed the files on all of them, yes.

12 Q. Okay. And -- did I get all of them?

13 There are three declarations that were  
14 provided?

15 A. Yes.

16 Q. And on each one of those you are the one who  
17 created Exhibit A?

18 A. Correct.

19 Q. And you're the one that reviewed the files  
20 for that?

21 A. Initially, yes.

22 Q. Okay. Initially, and then what? What  
23 happened after that? Did someone else make an  
24 examination?

25 A. Both Patricia and Merlyn would have reviewed

1     them before signing their declaration as well.

2           Q.     Okay. And what about Chino, was there any  
3     work done in connection with the Chino location?

4           A.     There were no individuals from Chino on the  
5     list I was provided.

6           Q.     Okay. And each of the persons on Exhibit A  
7     for all of these declarations, a background check and  
8     consumer report had been pulled or ordered for all of  
9     these individuals; isn't that right?

10          A.     I believe so.

11          Q.     And they would have been in the file;  
12     correct?

13          A.     Yes.

14          Q.     And they would have been considered by the  
15     human resource representative in the process of making  
16     the determination whether or not to hire this  
17     individual, this particular individual; correct?

18          A.     Not necessarily.

19          Q.     Why else would they be ordered?

20          A.     Because that process was all happening at the  
21     same time.

22          Q.     I understand, but you told me earlier that  
23     all the information was considered.

24                 MR. KONTUL: Objection.

25          A.     I believe I stated that everything on the

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing SECOND SUPPLEMENTAL APPENDIX OF RECORD MATERIALS IN SUPPORT OF CLOSETMAID'S MOTION TO DECERTIFY THE PRE ADVERSE ACTION SUB-CLASS was filed electronically on July 8, 2013. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ W. Scott Hardy

W. Scott Hardy, Esquire

Attorney for Defendant ClosetMaid Corporation